

FILED
DISTRICT COURT OF GUAM
NOV - 4 2005 *JP*
MARY L.M. MORAN
CLERK OF COURT

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Attorneys for Defendant
JOHN CRANE, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF GUAM

CESS NAVARRO OLMO, RONNIE) CIVIL CASE NO. 05-00025
PASCUAL FERRERAS,)

Plaintiff,)

vs.)

DEFENDANT JOHN CRANE, INC.'S
ANSWER TO FIRST AMENDED
COMPLAINT FILED AUGUST 16, 2005;
CERTIFICATE OF SERVICE

A.P. GREEN INDUSTRIES, INC., A.P.)
GREEN SERVICES, INC., A.W.)
CHESTERTON COMPANY, AMCHEM)
PRODUCTS, INC., ARMSTRONG WORLD)
INDUSTRIES, INC., ASBESTOS CLAIMS)
MANAGEMENT CORPORATION,)
BABCOCK & WILCOX COMPANY,)
COMBUSTION ENGINEERING, INC., DOW)
CHEMICAL COMPANY, DRESSER)
INDUSTRIES, INC., FLEXITALLIC, INC.,)
FLINTKOTE COMPANY, FOSTER)
WHEELER CORP., GAF CORPORATION,)
GARLOCK, INC., GEORGIA-PACIFIC)
CORPORATION, HARBISON-WALKER)
REFRACTORIES CO., HONEYWELL)
INTERNATIONAL, INC., JOHN CRANE,)
INC., KAISER GYPSUM COMPANY, INC.,)
METROPOLITAN LIFE INSURANCE)

ORIGINAL

1 COMPANY, OWENS CORNING, OWENS-)
2 ILLINOIS, INC., PITTSBURGH CORNING)
3 CORPORATION, QUIGLEY COMPANY,)
4 INC., UNITED STATES GYPSUM)
5 COMPANY, VIACOM, INC.,)
6)
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Defendants.

Comes now Defendant JOHN CRANE, INC., by and through its attorneys, MAHER, YANZA, FLYNN, TIMBLIN, LLP, Attorneys at Law, and for answer to the First Amended Complaint (hereinafter "Complaint") filed herein by Plaintiffs above-named alleges and avers as follows:

FIRST DEFENSE:

The Complaint fails to state a claim against JOHN CRANE, INC. upon which relief can be granted.

FIRST CAUSE OF ACTION

NEGLIGENCE

SECOND DEFENSE:

1. JOHN CRANE, INC. is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1, 2, 4, 5, 9, 10, 11, 12, and 13, and therefore denies the allegations contained therein.

2. JOHN CRANE, INC. admits that it is a corporation existing under the laws of Delaware. Except as so admitted, JOHN CRANE, INC. is without information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 3, therefore, denies the allegations insofar as they pertain to JOHN CRANE, INC., and makes no answer insofar as they pertain to other defendants.

1 3. JOHN CRANE, INC. denies the allegations contained in Paragraphs 6,
2 7, 8, and 14, insofar as they pertain to JOHN CRANE, INC., and makes no answer
3 insofar as they pertain to other defendants.

4 4. JOHN CRANE, INC. is without information or knowledge sufficient to
5 form a belief as to the truth of the allegations contained in paragraphs 15, 16, 17 and
6 18 of the Complaint, but denies the allegations insofar as they infer wrongdoing on
7 the part of JOHN CRANE, INC.

8
9 **SECOND CAUSE OF ACTION**
10 **STRICT LIABILITY**

11
12 5. As to the reallegations of Paragraph 19, JOHN CRANE, INC.
13 incorporates and restates its pleadings to the allegations of contained in the First
14 Cause of Action, Paragraphs 1 through 18 of the Complaint as if fully set forth
15 herein.

16 6. JOHN CRANE, INC. denies the allegations contained in Paragraphs 20
17 and 25 of the Complaint insofar as they pertain to JOHN CRANE, INC., and makes
18 no answer insofar as the allegations pertain to other defendants.

19 7. JOHN CRANE, INC. is without information or knowledge sufficient to
20 form a belief as to the truth of the allegations contained in Paragraphs 21, 22, 23,
21 and 24 of the Complaint, and therefore denies the allegations therein.

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1 **THIRD CAUSE OF ACTION**
2 **WARRANTY OF MERCHANTABILITY**

3 8. As to the reallegations of Paragraph 26, JOHN CRANE, INC.
4 incorporates and restates its pleading to the allegations of contained in the First and
5 Second Causes of Action, Paragraphs 1 through 25 of the Complaint as if fully set
6 forth herein.

7 9. JOHN CRANE, INC. denies the allegations contained in Paragraphs 27
8 and 28 insofar as they pertain to JOHN CRANE, INC., and makes no answer insofar
9 as the allegations pertain to other defendants.

10 10. JOHN CRANE, INC. denies the allegations contained in Paragraph 29
11 insofar as they pertain to JOHN CRANE, INC., and is without information or
12 knowledge sufficient to form a belief as to the truth of the remaining allegations.
13

14 **FOURTH CAUSE OF ACTION**
15 **MARKET SHARE LIABILITY**

16 11. As to the reallegations of Paragraph 30, JOHN CRANE, INC.
17 incorporates and restates its pleading to the allegations contained in the First, Second
18 and Third Causes of Action, Paragraphs 1 through 29 of the Complaint as if fully set
19 forth herein.

20 12. JOHN CRANE, INC., is without information or knowledge sufficient to
21 form a belief as to the truth of the allegations contained in Paragraphs 31, 32, 33, 34,
22 and 35 of the Complaint, and therefore denies the allegations contained therein.
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1 13. JOHN CRANE, INC. denies the allegations contained in Paragraph 36
2 insofar as they pertain to JOHN CRANE, INC., and makes no answer insofar as they
3 pertain to other defendants.

4
5 **FIFTH CAUSE OF ACTION**
6 **ENTERPRISE LIABILITY**

7 14. As to the reallegations of Paragraph 37, JOHN CRANE, INC.
8 incorporates and restates its pleading to the allegations of contained in the First
9 through Fourth Causes of Action, Paragraphs 1 through 36 of the First Amended
10 Complaint as if fully set forth herein.

11 15. JOHN CRANE, INC. is without information or knowledge sufficient to
12 form a belief as to the truth of the allegations contained in Paragraphs 38 and 39 of
13 the Complaint, and therefore denies the allegations contained therein.

14 16. JOHN CRANE, INC. denies the allegations contained in Paragraphs 40
15 and 41 insofar as they pertain to JOHN CRANE, INC., and makes no answer insofar
16 as they pertain to other defendants.

17
18 **SIXTH CAUSE OF ACTION**
19 **UNFIT FOR INTENDED USE**

20 17. As to the reallegations of Paragraph 42, JOHN CRANE, INC.
21 incorporates and restates its pleading to the allegations contained in the First
22 through Fifth Cause of Action, Paragraphs 1 through 41 of the Complaint as if fully
23 set forth herein.

1 18. JOHN CRANE, INC. is without information or knowledge sufficient to
2 form a belief as to the truth of the allegations contained in Paragraph 43 of the
3 Complaint, and therefore denies the allegations contained therein.
4

5 **SEVENTH CAUSE OF ACTION**
6 **NEGLIGENT MISREPRESENTATION**

7 19. As to the reallegations of Paragraph 44, JOHN CRANE, INC.
8 incorporates and restates its pleading to the allegations contained in the First through
9 Sixth Cause of Action, Paragraphs 1 through 43 of the Complaint as if fully set forth
10 herein.

11 20. JOHN CRANE, INC. denies the allegations contained in Paragraphs 45,
12 46, 47, and 48 insofar as they pertain to JOHN CRANE, INC., and makes no answer
13 insofar as the allegations pertain to other defendants.
14

15 **EIGHTH CAUSE OF ACTION**
16 **PUNITIVE DAMAGES**

17 21. As to the reallegations of Paragraph 49, JOHN CRANE, INC.
18 incorporates and restates its pleading to the allegations contained in the First to the
19 Seventh Causes of Action, Paragraphs 1 to 48 of the Complaint as if fully set forth
20 herein.
21

22 22. JOHN CRANE, INC. is without information or knowledge sufficient to
23 form a belief as to the truth of the allegations contained in Paragraphs 50, 51 and 52
24 of the Complaint, and therefore denies the allegations contained therein.

25 23. All paragraphs and allegations not expressly referred to herein are
denied.

1
2 THIRD DEFENSE:

3 24. Plaintiffs' claims against JOHN CRANE, INC. are barred because this
4 Court lacks personal jurisdiction over Defendant JOHN CRANE, INC. or the subject
5 matter of this lawsuit.
6

7 FOURTH DEFENSE:

8 25. Plaintiffs' claims against JOHN CRANE, INC. are barred because none
9 of the asbestos-containing products manufactured and/or supplied by JOHN
10 CRANE, INC., if any, to which Plaintiffs were allegedly exposed posed any health
11 hazard.
12

13 FIFTH DEFENSE:

14 26. Plaintiffs' claims against JOHN CRANE, INC. are barred because if
15 Plaintiffs sustained any of the injuries or damages alleged in the Complaint, such
16 injuries or damages were not proximately caused by any acts or conduct by JOHN
17 CRANE, INC.
18

19 SIXTH DEFENSE:

20 27. Plaintiffs' claims against JOHN CRANE, INC. are barred because if
21 Plaintiffs suffered any damages as alleged in the Complaint, such damages were
22 caused by the conduct solely of other persons or entities.
23

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25 //

1 SEVENTH DEFENSE:

2 28. Plaintiffs' claims against JOHN CRANE, INC. are barred because
3 Plaintiffs' were negligent and their negligence was a contributing cause of the
4 injuries and damages which Plaintiffs now complain, and any finding of negligence,
5 fault, or liability on the part of JOHN CRANE, INC. should therefore be defeated by, or
6 reduced by said contributing or comparative negligence.
7

8 EIGHTH DEFENSE:

9 29. Plaintiffs' claims against JOHN CRANE, INC. are barred because if
10 Plaintiffs suffered any of the injuries or damages as alleged in the Complaint, Plaintiffs
11 were aware of and voluntarily assumed the risk of such injuries and damages and
12 such voluntary assumption of risk was the proximate cause of such injuries and
13 damages.
14

15 NINTH DEFENSE:

16 30. Plaintiffs' claims against JOHN CRANE, INC. are barred because if
17 Plaintiffs were exposed to asbestos containing products allegedly manufactured or
18 sold by JOHN CRANE, INC., said exposure constituted such a small percentage of
19 Plaintiffs' total alleged asbestos exposure that the Court should dismiss the claim
20 against JOHN CRANE, INC. since its liability, if any, is legally insignificant.
21

22 TENTH DEFENSE:

23 31. Plaintiffs' claims against JOHN CRANE, INC. are barred by the failure to
24 properly use, or the misuse of, or the failure to maintain the product.
25

1 ELEVENTH DEFENSE:

2 32. Plaintiffs' claims against JOHN CRANE, INC. are barred from recovery
3 herein, because of modification, alteration or change in some manner of the products
4 alleged in the Amended Complaint.

5
6 TWELFTH DEFENSE:

7 33. Plaintiffs' claims against JOHN CRANE, INC. are barred by the lack of
8 privity.

9
10 THIRTEENTH DEFENSE:

11 34. Plaintiffs' claims against JOHN CRANE, INC. are barred because
12 Plaintiffs' have failed to join necessary and/or indispensable parties.

13
14 FOURTEENTH DEFENSE:

15 35. Plaintiffs' claims against JOHN CRANE, INC. are barred by the
16 applicable statute of limitations, statute of repose, or doctrine of laches.

17
18 FIFTEENTH DEFENSE:

19 36. Plaintiffs' claims against JOHN CRANE, INC. are barred by the doctrines
20 of release, estoppel and waiver.

21
22 SIXTEENTH DEFENSE:

23 37. Plaintiffs' claims against JOHN CRANE, INC. are barred or must be
24 reduced against JOHN CRANE, INC. because Plaintiffs have failed to mitigate their
25 damages, if any.

1 SEVENTEENTH DEFENSE:

2 38. Plaintiffs' claims against JOHN CRANE, INC. are barred because of
3 spoliation of evidence.
4

5 EIGHTEENTH DEFENSE:

6 39. Plaintiffs' claims against JOHN CRANE, INC. are barred, apportioned or
7 reduced because of Plaintiffs' preexisting conditions.
8

9 NINETEENTH DEFENSE:

10 40. Plaintiffs' claims against JOHN CRANE, INC. are barred because if
11 Plaintiffs were injured or damaged as alleged in the Complaint, said injuries or
12 damage an act of God and/or natural and unavoidable causes beyond the control of
13 JOHN CRANE, INC.
14

15 TWENTIETH DEFENSE:

16 41. Plaintiffs' claims against JOHN CRANE, INC. are barred or reduced due
17 to avoidable consequences.
18

19 TWENTY-FIRST DEFENSE:

20 42. Plaintiffs' claims against JOHN CRANE, INC. are barred because if
21 Plaintiffs were injured or damaged as alleged in the Complaint, such injuries and
22 damages were caused by an intervening or superseding cause beyond the control of
23 JOHN CRANE, INC.
24

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1 TWENTY-SECOND DEFENSE:

2 43. Plaintiffs' claims against JOHN CRANE, INC. are barred because
3 Plaintiffs' alleged injuries and damages were not reasonably foreseeable.
4

5 TWENTY-THIRD DEFENSE:

6 44. Plaintiffs' claims against JOHN CRANE, INC. are barred because JOHN
7 CRANE, INC. complied with all existing safety standards and precautions then
8 consistent with the state of the art.
9

10 TWENTY-FOURTH DEFENSE:

11 45. Plaintiffs' claims against JOHN CRANE, INC. are barred because all
12 asbestos containing products manufactured and/or supplied by JOHN CRANE, INC., if
13 any, were manufactured and supplied in compliance with all applicable government
14 and industry standards.
15

16 TWENTY-FIFTH DEFENSE:

17 46. Plaintiffs' claims against JOHN CRANE, INC. is barred under the
18 "government contract defense."
19

20 TWENTY-SIXTH DEFENSE:

21 47. Plaintiffs' claims against JOHN CRANE, INC. are barred by the Uniform
22 Commercial Code.
23

24 TWENTY-SEVENTH DEFENSE:
25

1 48. Plaintiffs' claims against JOHN CRANE, INC. are barred because JOHN
2 CRANE, INC. did not make any warranties, express or implied to Plaintiffs. To the
3 extent that the alleged representations or warranties were made, they were made by
4 persons or entities other than JOHN CRANE, INC.

5
6 TWENTY-EIGHTH DEFENSE:

7 49. Plaintiffs' claims against JOHN CRANE, INC. are barred because
8 Plaintiffs did not rely on any representations or warranties made by JOHN CRANE,
9 INC. To the extent Plaintiffs relied on any alleged representations or warranties, such
10 reliance was unjustified.

11
12 TWENTY-NINTH DEFENSE:

13 50. Plaintiffs' claims against JOHN CRANE, INC. are barred by the failure to
14 provide timely notice of any alleged breach of warranties.

15
16 THIRTIETH DEFENSE:

17 51. Plaintiffs' claims against JOHN CRANE, INC. are barred because any
18 oral warranties upon which Plaintiffs rely are inadmissible and unavailable because of
19 the provision of the applicable Statute of Frauds.

20
21 THIRTY-FIRST DEFENSE:

22 52. Plaintiffs' claims against JOHN CRANE, INC. for punitive damages are
23 barred because such damages are not recoverable or warranted in this action.

24
25 THIRTY-SECOND DEFENSE:

1 53. Plaintiffs' claims against JOHN CRANE, INC. for punitive damages are
2 barred by the United States Constitution and Organic Act of Guam.

3 THIRTY-THIRD DEFENSE:

4 54. Plaintiffs' claims against JOHN CRANE, INC. are barred because JOHN
5 CRANE, INC. did not ratify any conduct and/or acts of any other defendant as set forth
6 in this Complaint.

7
8 THIRTY-FOURTH DEFENSE:

9 55. Plaintiffs' claims against JOHN CRANE, INC. are barred by the
10 applicable Worker's Compensation laws of this Territory.

11
12 THIRTY-FIFTH DEFENSE:

13 56. Plaintiffs' claims against JOHN CRANE, INC. are barred in whole or in
14 part by the doctrines of res judicata and collateral estoppel.

15
16 THIRTY-SIXTH DEFENSE:

17 57. Plaintiffs' claims against JOHN CRANE, INC. are barred because there
18 has been insufficient service of process herein.

19
20 THIRTY-SEVENTH DEFENSE:

21 58. Plaintiffs' claims against JOHN CRANE, INC. are barred by reason of
22 improper venue and/or under the doctrine of forum non-conveniens.

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1 THIRTY-EIGHTH DEFENSE:

2 59. Plaintiffs' claims against JOHN CRANE, INC. are barred by reason of
3 accord and satisfaction of the claims upon which this action is based.
4

5 THIRTY-NINTH DEFENSE:

6 60. Plaintiffs' claims against JOHN CRANE, INC. are barred because
7 Plaintiffs' employers were contributorily negligent regarding the matters contained in
8 Plaintiffs' Complaint, and said negligence was a proximate cause of any injuries and
9 damages, if any, suffered by Plaintiffs.
10

11 FORTIETH DEFENSE:

12 61. Plaintiffs' claims against JOHN CRANE, INC. are barred because any
13 injuries or damages sustained by Plaintiffs were caused by negligence, fault or want
14 of case on the part of Plaintiffs' sophisticated employers, who were knowledgeable
15 with respect to products containing asbestos and hazards associated therewith, thus
16 discharging any legal duty or obligation of JOHN CRANE, INC. to Plaintiffs.
17

18 FORTY-FIRST DEFENSE:

19 62. Plaintiffs' claims against JOHN CRANE, INC. are barred because any
20 injuries or damages sustained by Plaintiffs were caused by negligence, fault or want
21 of care on the part of other entities, such as Plaintiffs' employers and trade unions,
22 who by their own independent knowledge and sophistication, had superior motives,
23 duties, and opportunities to implement warnings and instruction for Plaintiffs' health
24 and safety in connection with Plaintiffs' alleged exposure to asbestos containing
25 products, and it is the breach of those duties, and not the breach of any duty owing

1 by JOHN CRANE, INC., that was the proximate or legal cause of Plaintiffs'
2 damages, if any.

3
4 FORTY-SECOND DEFENSE:

5 63. JOHN CRANE, INC. alleges that Plaintiffs' Complaint is controlled or
6 limited by the state of the law as it existed when JOHN CRANE, INC. discontinued
7 the manufacture and/or supply of the alleged asbestos-containing products to which
8 Plaintiffs were exposed, if such manufacture and/or supply occurred at all.

9
10 FORTY-THIRD DEFENSE:

11 64. JOHN CRANE, INC. incorporates herein by reference all affirmative
12 defenses and other matters constituting an avoidance or affirmative defense raised
13 by each and every defendant, and reserves the right to assert such other defenses
14 of which it may become aware of during the course of further investigation, discovery
15 or trial in this matter.

16
17 WHEREFORE, JOHN CRANE, INC. prays:

18 1. That Plaintiffs' Complaint herein be dismissed as against Defendant
19 JOHN CRANE, INC. and that JOHN CRANE, INC. be awarded its costs herein,
20 including reasonable attorney's fees.

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1 2. That JOHN CRANE, INC. have such other and further relief as to this
2 Court seems just and equitable in the premises.

3 Dated this 4th day of November, 2005.

4 **MAHER . YANZA . FLYNN . TIMBLIN, LLP**
5 Attorneys for Defendant
6 **JOHN CRANE, INC.**

7
8 By:

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LOUIE J. YANZA

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I, Louie J. Yanza, hereby certify that on or before November 4, 2005, I caused to be sent by personal service or by facsimile a copy of the annexed **Defendant John Crane, Inc.'s Answer to First Amended Complaint filed August 16, 2005; Certificate of Service**, to the following parties at their place of business:

John S. Unpingco, Esq.
LUJAN, UNPINGCO, AGUIGUI & PEREZ, LLP
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 Counsel for Cess Navarro Olmo and Ronnie Pascual Ferreras, Plaintiffs

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 865 South Marine Corps. Drive
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 Counsel for Garlock, Inc., Viacom, Inc., successor by merger to CBS Corporation,
 formerly known as Westinghouse Electric Corporation, Foster Wheeler Corporation,
 Bayer Cropscience, Inc. as Successor-in-Interest to Amchen Products, Inc. and The
 Dow Chemical Company

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Counsel for Metropolitan Life Insurance Company

1 **J. Patrick Mason, Esq.**
2 **CARLSMITH BALL, LLP**
3 Bank of Hawaii Building, Suite 401
4 134 West Soledad Avenue
5 Post Office Box BF
6 Hagatña, Guam 96932-5027
7 Counsel for Georgia-Pacific Corporation, A.W. Chesterton Company, and Kaiser
8 Gypsum Company, Inc.

9 and, via regular mail, to all the parties listed on the attached matrix of Agents of Service
10 of Process.

11 Dated this 4th day of November, 2005.

12 **MAHER • YANZA • FLYNN • TIMBLIN, LLP**
13 Attorneys for Defendant
14 **JOHN CRANE, INC.**

15 By: 

16 **LOUIE J. YANZA**

1 A.P. Green Industries, Inc.
2 c/o CT Corporation System
3 120 S. Central Ave.
4 Clayton, MO 63105

5 Combustion Engineering, Inc.
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8 Wilmington, DE 19801

9 Flexitallic, Inc.
10 c/o CT Corporation System
11 818 West Seventh St.
12 Los Angeles, CA 90017

13 Honeywell International, Inc.
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16 Wilmington, DE 19801

17 United States Gypsum Company
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